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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 1995	)))	MD Docket No. 95-3

CABLEVISION LIGHTPATH, INC.
COMMENTS ON PROPOSED REGULATORY FEE STRUCTURE

Cablevision Lightpath, Inc. ("Lightpath"),[1/] by its undersigned counsel, hereby submits the following comments in response to the Notice of Proposed Rule Making in the above-captioned docketed proceeding ("*Regulatory Fees NPRM*").[2/]

Lightpath questions the apparently arbitrary and capricious manner in which the Commission has proposed to calculate the regulatory fee for competitive access providers ("CAPs"). The Commission's reclassification of the CAPs' regulatory fee based on the number of voice equivalent lines has a particularly onerous impact on CAPs, placing an enormous cost burden on competitive providers and unduly hindering providers of high

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1/ Lightpath is a fiber-optic based provider of competitive access services, and is a wholly-owned subsidiary of Cablevision Systems Corporation, the nation's fifth largest cable television operator with more than 2.5 million subscribers in 19 states. The comments submitted by Lightpath only govern the application of the regulatory fees to CAPs, and do not take a position on behalf of Cablevision Systems Corporation regarding the cable television regulatory fees.

2/ *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, FCC 95-14, released January 12, 1995.

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capacity data services. Lightpath proposes that the Commission impose regulatory fees in the common carrier services category based on revenues, not the estimated number of lines.

I. THE COMMISSION'S RECLASSIFICATION SCHEME UNREASONABLY SINGLES OUT CAPS TO BEAR AN ENORMOUS AND UNANTICIPATED COST BURDEN

The Commission's method of calculating customer units for providers of common carrier services based on the number of voice-grade equivalent circuits singles out CAPs, placing a significant and unanticipated cost burden on CAPs in derogation of the Commission's established policy against "rate shock" and the stated intent of the *Regulatory Fees NPRM*.

In its *Regulatory Fees NPRM*, the Commission states that in adjusting its regulatory fee requirements it wants "to minimize any adverse impacts to the schedule brought solely by such a classification change."[3/] Moreover, the Commission has a long-standing policy against "rate shock" which can create substantial negative effects in the telecommunications marketplace, compromising the ability of carriers to provide service to customers as well as impeding competition.[4/]

3/ *Regulatory Fees NPRM*, ¶ 14.

4/ *See Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC 84-524, released November 9, 1984 (adoption of the OCC Rate Equalization Plan implementing transitional rates for Other Common Carriers to mitigate the "rate shock" of a sudden shift to higher cost-based rates), *rev'd on other grounds*, *Western Union Telegraph Company v. FCC*, 815 F.2d 1495 (D.C. Cir. 1987) (upheld the Commission's decision to prescribe transitional rates to avert rate shock); *see also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, 4 FCC Rcd 3983 (1989) (explaining the Commission's interim exemption of full access charge treatment for certain interstate service providers so as to avoid the negative impacts of rate shock).

The *Regulatory Fees NPRM*, however, proposes to reclassify the way regulatory fees are imposed upon CAPs, no longer imposing the fees according to the number of a CAP's customers, but according to the number of voice-grade equivalent circuits that the CAP provides. In so doing, the Commission's proposal singles out CAPs for enormous increases in the regulatory fees, increasing the overall CAP liability hundreds of percent over the current requirement -- under the Commission's proposal, Cablevision would realize an immediate increase of over 200% in 1995. This sudden and immense cost burden will be profoundly burdensome on CAPs, and may seriously undermine the benefits of competition that CAPs bring to the telecommunications marketplace. Because the Commission's proposal would impose substantial rate shock upon CAPs, it is inconsistent with established Commission policy and should be rejected in favor of a more reasonable fee structure, as Lightpath proposes below.

II. THE COMMISSION'S PROPOSED METHODOLOGY FOR SETTING CAP REGULATORY FEES IS ARBITRARY AND CAPRICIOUS AND PLACES AN UNDUE BURDEN ON CAPS PROVIDING HIGH CAPACITY DATA SERVICES

In its *Regulatory Fee NPRM*, the Commission fails to adequately explain how it derived the 300 million customer units it uses to calculate the regulatory fee for CAPs and other common carriers. The Commission bases its 300 million customer unit figure in part on the assumption that there are only 4 million LEC and IXC special access lines in service, and an assumption that resellers and competitors only increase the number of lines nationwide by five percent. The Commission does not explain the bases for these assumptions, which appear to understate considerably the amount of special access lines currently in service. Interested parties cannot responsibly address the reasonableness of the Commission's computations given the absence of support for the proposed methodology. Indeed, Lightpath posits that, absent further justification for the assumptions used by the Commission, the fee structure proposed in the *Regulatory Fees NPRM* is arbitrary and capricious.

Moreover, the Commission's arbitrary decision to employ voice-grade circuits to determine the number of customer units used to impose the CAPs' regulatory fee unduly shifts the burden of payment to CAPs and other parties that provide a high level of data services. The Commission's calculation of the total number of customer units based on voice equivalent lines understates the usage of the network, and thus, it inflates the regulatory fee. Millions of lower grade circuits are not counted. For example, one DS1 can provide 24 voice grade circuits, but it can also provide hundreds of data circuits. This miscalculation is compounded by the fact that the use of data circuits has grown dramatically in comparison to the growth in voice circuits over the last several years. To accurately depict network usage, the Commission's calculation of the customer units must take into consideration <u>all</u> circuits provided by common carriers, and not merely voice grade circuits. Were the Commission's computation amended to take data circuits into account, the number of customer units would increase dramatically, and the level of the per-line fee would be reduced considerably. These apparent shortcomings in the Commission's computational methods fatally flaw the proposed fee structure, and require that it be replaced with a more reasonable model.

III. THE COMMISSION SHOULD IMPOSE CHARGES BASED ON REVENUES, NOT ESTIMATED NUMBER OF LINES

Any fee structure that is based on an estimated number of circuits of a particular type that are in effect in any given year is inherently unsound. In any particular year, the relative growth of data and voice grade lines may change dramatically. Moreover, the number of lines provided by CAPs and resellers is growing considerably, thus, reliance on historical data is impracticable. In addition, the overall usage of data services is skyrocketing, and the amount of resale is growing dramatically. Therefore, even if the Commission's per-line figure is correct at the present time (and the Commission has not referenced adequate data to support its estimates), it likely will be outmoded by the end of the year. Moreover, unless the Commission imposes draconian new reporting requirements on all facilities-based carriers and resellers, it is impossible to obtain a reasonable and verifiable estimate of the number lines deployed.

Rather, the Commission should base the imposition of a regulatory fee for common carriers on revenue. A revenued-based fee is objectively verifiable, much more stable, and ensures an equitable sharing of the fee burden. For the Commission's purposes, revenues reflect a much more reasonable and reliable surrogate for network usage than any estimates of total-industry lines in service. For this reason Lightpath strongly urges the Commission to adopt a regulatory fee schedule for common carriers that imposes fees in proportion to revenues derived from regulated services.

IV. CONCLUSION

For the reasons discussed above, Lightpath respectfully submits that the Commission should abandon the common carrier regulatory fee structure proposed in the *Regulatory Fees NPRM* and adopt a fee structure premised on common carriers' revenues from regulated services.

Respectfully submitted,

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Dated: February 13, 1995

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February 1995, copies of the foregoing CABLEVISION LIGHTPATH, INC. COMMENTS ON PROPOSED REGULATORY FEE STRUCTURE, MD DOCKET NO. 95-3, were sent Hand-Delivery to the following:

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